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No. 03-1696

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

EXXON MOBIL CORPORATION, EXXON CHEMICAL ARABIA, INC., AND MOBIL YANBU PETROCHEMICAL COMPANY, INC.,
Petitioners,

v.

SAUDI BASIC INDUSTRIES CORPORATION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

The *Rooker-Feldman* doctrine is grounded in a negative inference from 28 U.S.C. §1257 and is a narrow exception to the broad federal jurisdiction granted by Congress under article III of the Constitution. Its only application is to prevent lower federal courts from exercising appellate jurisdiction over state-court judgments—that is, from hearing a complaint that a party has been injured by a state-court judgment and seeking an order reversing, vacating, or otherwise nullifying that judgment.

Rooker-Feldman was never intended to address the entirely separate issue of concurrent state and federal jurisdiction, an inherent feature of the "complementary systems for administering justice in our Nation." *Kowalski* v. *Tesmer*, __ U.S. __, 125 S.Ct. 564, 569 (2004). Concurrent jurisdiction permits parallel litigation of identical claims in state and federal courts, leading unavoidably in some cases to the potential risk of competing judgments. But the task of dictating when a race to judgment may proceed and when it should be declared over falls not to tightly circumscribed jurisdictional exceptions like *Rooker-Feldman*, but to well-known, well-developed, and nonjurisdictional legal principles created for that very purpose. In appropriate and limited circumstances, nonjurisdictional abstention or prudential-dismissal doctrines may avoid a race to judgment altogether. And when a state court wins a permissible race to judgment, the Full Faith and Credit Act, 28 U.S.C. §1738, requires federal courts to give that judgment precisely the same preclusive effect it enjoys in the rendering state. The district court in this proceeding should have been permitted to address the preclusive effect of the Delaware judgment on the parties' mutual claims, and there is no suggestion that the district court was unwilling or unable to do just that, if given the opportunity.

The core fallacy of the Third Circuit's expansion of *Rooker-Feldman* is that it improperly equates the wrap-up

process of declaring the winner of a race to judgment with a de facto appeal of the first judgment. SABIC's theory of vanishing subject matter jurisdiction is both unprecedented and insupportable. A parallel federal lawsuit with an independent basis for subject matter jurisdiction does not instantaneously morph into a jurisdictionally barred appeal the minute the state court enters its judgment. The continued pendency in federal court of claims that have been resolved in state court does not constitute an improper de novo review of the state judgment because the claims do not seek to reverse, vacate, or otherwise nullify that judgment. The federal proceeding is merely a (temporary) continuation of a pre-existing lawsuit. There is no plausible justification for supplanting and rendering nugatory Congress's statutory requirement that federal courts apply state-law preclusion principles and replacing it with a new common-law bar to federal jurisdiction that suddenly materializes the moment an issue reaches conclusion in state court.

The inapplicability of the *Rooker-Feldman* doctrine should have been especially apparent in this case because ExxonMobil, the victor in Delaware, obviously seeks no review of the Delaware superior court's judgment in its favor, which the Delaware Supreme Court has now affirmed. The Third Circuit's decision was based in part on its speculation that the Delaware Supreme Court might reverse and that ExxonMobil might seek to undo that hypothetical adverse determination. But it was improper to base a jurisdictional inquiry on speculation about future events—as amply illustrated by the fact that the court's speculation proved wrong. Applying *Rooker-Feldman* speculatively, as the Third Circuit did, improperly undermines the duality of our judicial system by jurisdictionally ousting parallel actions that are within the original jurisdiction granted to the federal district courts. To maintain the carefully crafted structure of concurrent federal jurisdiction—as enacted by Congress and explicated by the Court over many decades—the Court should clarify that

Rooker-Feldman is confined to instances in which a federal plaintiff actually seeks direct "review" of a previously made state-court decision in federal district court.

SABIC's new assertion that the case became moot the moment the Delaware superior court rendered judgment is belied by SABIC's continued vigorous attempts to pursue appellate remedies. Although the Delaware Supreme Court has affirmed the judgment, SABIC continues to seek re-hearing and intimates it will seek review from this Court. Regardless of the ultimate finality of the Delaware judgment, the Third Circuit's erroneous application of *Rooker-Feldman* is not moot because reversal by the Court will permit the district court to perform a proper comprehensive preclusion analysis that evaluates not only ExxonMobil's affirmative claims in this case, but also SABIC's ability to further contest ExxonMobil's affirmative defenses to SABIC's claims in NJ-I. In the end, SABIC fails to recognize the distinction the Court first made many years ago between a continuing live controversy over federal jurisdiction and resolution in another forum of a dispute on the underlying merits. If further federal litigation is barred in this case, it is barred by preclusion principles, not mootness. And preclusion is an affirmative defense that must be addressed by the federal district court in the first instance, not sua sponte on appeal.

ARGUMENT

I. THE THIRD CIRCUIT'S EXPANSION OF *ROOKER-FELDMAN* IS INCONSISTENT WITH THE DUAL CONGRESSIONAL COMMANDS OF CONCURRENT JURISDICTION AND RESPECT FOR STATE PRECLUSION LAW.

The Court should reject an expansive reformulation of *Rooker-Feldman* that displaces state preclusion law and erodes the duality of our judicial system. SABIC's application of the *Rooker-Feldman* jurisdictional bar to any case in which issues are litigated to judgment in a state court conflicts with Congress's express command to accord respect to

state-law preclusion principles and with decades of the Court's jurisprudence interpreting that command. *Rooker-Feldman* does not bar every claim that might be barred by res judicata, nor does it forbid every race to judgment on parallel claims. *Rooker-Feldman* bars only those federal actions that seek direct nullification of decisions by state courts. The doctrine has no application to this case, in which no state court has even rendered an adverse judgment against ExxonMobil and in which ExxonMobil never asked the federal district court to review the decision of a state court.

The court of appeals articulated two related yet distinct rationales for its holding, and both were erroneous. The first "prong" of the court's analysis focused on the assertion that ExxonMobil's claims arising out of SABIC's secretly overcharging the joint ventures were "actually litigated" in the Delaware trial court. Pet. App. 6a-8a. That analysis conflated *Rooker-Feldman* with res judicata, effectively supplanting the nonjurisdictional principle of claim preclusion with an overriding jurisdictional bar. And it ignores that the relief sought in ExxonMobil's action was consistent with the result in Delaware and could not nullify the Delaware trial court's judgment. The second "prong" invoked by the court of appeals relied on speculation that the Delaware Supreme Court might overturn the trial court's judgment, which, the court reasoned, would render ExxonMobil's federal suit an action "to invalidate a final judgment of the state court." *Id.*, at 8a. The court purported to premise its ultimate *Rooker-Feldman* holding on the combined effect of those two "prongs." *Id.*

A. The Court Should Reject Any Conflation of *Rooker-Feldman* with Ordinary Preclusion Principles.

Rooker-Feldman cannot jurisdictionally bar ExxonMobil's claims in federal court because those claims do not seek to undo a state-court judgment. *Cf. Friedman's, Inc.* v. *Dunlap*,

290 F.3d 191, 200 (CA4 2002) (Niemeyer, J., dissenting) ("The fundamental purpose of the *Rooker-Feldman* doctrine—to prohibit appeals to federal court *to review* a state court judgment—cannot be fulfilled in an action, not seeking to review a state court judgment, but to reinforce it with a parallel federal judgment."). There is a fundamental difference between appellate review of a state-court judgment, which federal district courts have no power to undertake, and relitigation of identical claims. An action is attempted appellate review only if it seeks to reverse, vacate, or otherwise nullify a prior judgment of another court. Simply put, an appellate judgment directly trumps an earlier judgment and, if it conflicts with that judgment, renders it null and void. *See Rooker* v. *Fid. Trust Co.*, 263 U.S. 413, 414 (1923).

In contrast, parallel litigation of similar or identical claims creates a potential (and fundamentally different) risk that two courts of original jurisdiction may independently adjudicate the claims and enter judgments covering the same subject matter. *See Growe* v. *Emison*, 507 U.S. 25, 32 (1993) ("[F]ederal courts and state courts often find themselves exercising concurrent jurisdiction over the same subject matter."). The judgments may be inconsistent with one another and may create conflicting obligations for the parties, but neither judgment asserts jurisdiction over the other court or authoritatively declares invalid the judgment of the other court. *See Kline* v. *Burke Constr. Co.*, 260 U.S. 226, 230 (1922) ("Each court is free to proceed in its own way and in its own time, without reference to the proceedings in the other court.").[1] The risk created by parallel litigation is not the arrogation of appellate jurisdiction by federal district courts, but

[1] *Kline* distinguished actions in personam from actions in rem, in which, necessarily, jurisdiction is lodged with whichever court—state or federal—first takes jurisdiction over the subject property. 260 U.S., at 229. Unlike *Rooker-Feldman*, the rule regarding in rem jurisdiction has nothing to do with whether either court has yet rendered a judgment.

rather the more practical concern of preventing intersystem conflicts by courts presumptively possessing concurrent jurisdiction, which is ordinarily obviated by the proper application of abstention or preclusion doctrines. *See Growe*, 507 U.S., at 32 ("In rare circumstances, . . . principles of federalism and comity dictate" abstention or deferral); *Kline*, 260 U.S., at 230 ("Whenever a judgment is rendered in one of the courts and pleaded in the other, the effect of that judgment is to be determined by the application of the principles of res adjudicata by the court in which the action is still pending in the orderly exercise of its jurisdiction.").

In defending the Third Circuit's *Rooker-Feldman* approach, SABIC redefines it, focusing entirely on whether claims were "actually litigated" in state court, without regard to whether the federal plaintiff seeks to invalidate a state-court judgment. *E.g.*, SABIC Br. 13 (*Rooker-Feldman* bars "federal district courts from entertaining suits that raise claims or issues already adjudicated in a state-court proceeding"). In SABIC's version of *Rooker-Feldman*, it is sufficient that the underlying claims have proceeded to judgment in a state court. *Id.*, at 25 ("[W]hen a dispute has reached a final judgment in state court (whether favorable or unfavorable), then all subsequent litigation must be pursued through the state appellate system."). The court of appeals at least recognized that whether the federal plaintiff seeks to "invalidate a final judgment of the state court" is relevant to determining if the federal action involves forbidden de facto appellate review. Pet. App. 8a.

SABIC goes further, relying—repeatedly—on the fallacious contention that any relitigation of issues already adjudicated amounts to appellate "review" of the previous adjudication, even if the relitigation is conducted without any reference to the work done by the earlier-acting court. *E.g.*, SABIC Br. 29 (characterizing "[a] federal court's issue-by-issue 'relitigation' of the identical claims" as "in essence *de*

novo appellate review"). But de novo review is a process for asserting appellate jurisdiction over a trial court and deciding whether the court's decision should be affirmed or reversed; it is not merely the independent litigation of claims under a grant of original jurisdiction. *Cf. City of Chi.* v. *Int'l Coll. of Surgeons*, 522 U.S. 156, 171 (1997) (distinguishing trial de novo from appellate review).

Expanding *Rooker-Feldman* to encompass every case involving claims or issues that were previously litigated in a state court without regard to whether the federal action actually attempts to nullify the state-court judgment conflicts with Congress's delineation of federal-court jurisdiction as interpreted by this Court. As *D.C. Court of Appeals* v. *Feldman*, 460 U.S. 462 (1983), makes clear, a federal suit can be an attempt to review a state-court decision only if the relief sought by the federal plaintiff would nullify that decision. The distinction in *Feldman* between those claims that were jurisdictionally barred and those that were not turned on the remedy sought through each claim, not on whether the claims were actually litigated in the state court. The federal plaintiffs' claims that they were legally wronged by the denial of their particular petitions for admission to the D.C. bar were "inextricably intertwined with the District of Columbia Court of Appeals' decisions" and would have "required the District Court to review" those adverse decisions because the only effective remedy a federal court could award would be to directly order the defendant D.C. court to reverse its decisions. *Id.*, at 486-87. The plaintiffs' remaining allegations, however, "involve[d] a general attack on the constitutionality of" the bar admission rule, and the relief sought by those claims—a declaration that the rule was unconstitutional—would "not require review of a judicial decision in a particular case." *Id.*, at 487. At most, a federal court's declaration that the rule was unconstitutional would differ from the D.C. court's implicit holding that its rule was

constitutional.[2] Accordingly, there was no jurisdictional bar to the district court's considering the general constitutional claims on the merits, including the affirmative defense of res judicata. *Id.*, at 487-88.

The fact that ExxonMobil's federal action was filed before any state-court judgment existed further demonstrates that ExxonMobil has never sought review of the state-court judgment. "[I]f the federal action was filed prior to the state action, it cannot be said that the party aggrieved by the state court's ruling filed the federal case to 'appeal' the state court's ruling." *Bosdorf* v. *Beach*, 79 F.Supp.2d 1337, 1339 (S.D. Fla. 1999); *accord Doctor's Assocs., Inc.* v. *Distajo*, 107 F.3d 126, 138 (CA2 1997). And even SABIC recognizes that "the *Rooker-Feldman* doctrine prevents *disappointed* litigants from abandoning the state-court processes." SABIC Br. 28 (emphasis added). SABIC fails to offer anything more than conclusory assertions to explain how the continuation of a preexisting federal action by a satisfied state-court litigant, like ExxonMobil, could involve "review" of a favorable state-court decision.

Apparently conceding that *Rooker-Feldman* would not have barred ExxonMobil's federal suit before the Delaware trial court issued its judgment,[3] SABIC reconceptualizes *Rooker-Feldman* as a doctrine of vanishing jurisdiction, under which original jurisdiction once present can suddenly evaporate "once the [state] trial court had reached a judgment." SABIC Br. 32. There is neither precedent nor principle to support SABIC's theory that a federal court "relinquishes original jurisdiction" merely because a state

[2] Indeed, it is not entirely clear that the general constitutional attack was not "actually litigated as part of the dispute." SABIC Br. 20. At least in Feldman's case, the issue was raised in a letter to the D.C. court. *Feldman*, 460 U.S., at 467.

[3] Although that concession is inconsistent with the second "prong" of the Third Circuit's *Rooker-Feldman* analysis. *See* Part I.B, *infra*.

court reaches final judgment on parallel claims. *Id.*, at 34; *cf. Freeport-McMoran, Inc.* v. *K N Energy, Inc.*, 498 U.S. 426, 428 (1991) ("We have consistently held that if jurisdiction exists at the time an action is commenced, such jurisdiction may not be divested by subsequent events."). It is inconsistent with the statutory structure under which (1) "our dual system of federal and state governments allows parallel actions to proceed to judgment until one becomes *preclusive* of the other," *Vulcan Chem. Techs., Inc.* v. *Barker*, 297 F.3d 332, 340 (CA4 2002) (emphasis added), and (2) "[f]ederal courts may not 'employ their own rules . . . in determining the effect of state judgments,' but must 'accept the rules chosen by the State from which the judgment is taken.'" *Matsushita Elec. Indus. Co.* v. *Epstein*, 516 U.S. 367, 373 (1996).

In many instances, our dual jurisdictional structure permits a "race to judgment" on identical claims. *E.g.*, *Green* v. *City of Tucson*, 255 F.3d 1086, 1097 (CA9 2001) (en banc), *overruled in part on other grounds*, *Gilbertson* v. *Albright*, 381 F.3d 965 (CA9 2004); *accord Parsons Steel, Inc.* v. *First Ala. Bank*, 474 U.S. 518, 524-25 (1986). Specifically, concurrent jurisdiction permits a race to *preclusive* judgment. *E.g.*, *Vulcan*, 297 F.3d, at 338; *accord Kline*, 260 U.S., at 230. Abstention, deferral, and prudential-dismissal doctrines reflect the determination that, in very limited circumstances, that race should not be allowed to proceed. *See, e.g.*, *Growe*, 507 U.S., at 32; *Colo. River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 813-17 (1976). But when the race is on, *state* preclusion rules, not jurisdictional doctrines like *Rooker-Feldman*, draw the finish line. *See Matsushita Elec.*, 516 U.S., at 373.

SABIC's version of *Rooker-Feldman* would supplant state preclusion law, which SABIC regards as presenting "too many vagaries." SABIC Br. 34. But Congress has expressly commanded the federal courts to respect those "vagaries." *See, e.g.*, *Matsushita*, 516 U.S., at 373; *Migra* v. *Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984) ("It is now

settled that a federal court must give to a state-court judgment *the same* preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." (emphasis added)); *Allen* v. *McCurry*, 449 U.S. 90, 96 (1980) ("Congress has specifically required all federal courts to give preclusive effect to state-court judgments *whenever the courts of the State from which the judgments emerged* would do so." (emphasis added)). In stark contrast to the Court's precedent, SABIC seeks to replace respect for state-law preclusion principles with a federal common-law rule, under which *Rooker-Feldman* "bars *federal-court* relitigation of claims" even when the decision is not entitled to preclusive effect. SABIC Br. 38. SABIC urges, for example, that federal courts should disregard the principle applied by a substantial minority of states that preclusive effect does not attach to a judgment until the highest state court has rendered a final judgment or the time to appeal has expired. *Id.*, at 37 & n.16. That result cannot be squared with the requirement that federal courts give preclusive effect to state judgments when, and only when, the courts of the rendering state would give that effect. *See Noel* v. *Hall*, 341 F.3d 1148, 1160 (CA9 2003).

SABIC offers no justification for replacing traditional preclusion principles with an unbending jurisdictional bar, but blithely dismisses the inquiry by observing that, under its *Rooker-Feldman* approach, federal courts will rarely have occasion to make preclusion determinations. SABIC Br. 40. But federal courts should apply traditional preclusion doctrines when asked to pass on issues that have previously been litigated in state court. SABIC's prediction of "the bizarre result of allowing federal review of state-law determinations," *id.*, at 28 n.3, simply ignores that preclusion principles are both efficacious and congressionally mandated to avoid relitigation. Preclusion—in appropriate cases—prevents "full scale 'relitigation,'" *id.*, at 29, of identical claims. Numerous examples of federal courts applying state res

judicata law to claims that were previously "actually litigated" in state courts demonstrate that SABIC's approach to *Rooker-Feldman* cannot be correct. *See, e.g.*, *Matsushita*, 516 U.S., at 373-74; *Kremer* v. *Chem. Constr. Corp.*, 456 U.S. 461, 466-67, 479-80 (1982); *Allen*, 449 U.S., at 92-94 & n.2; *Guerrero* v. *Katzen*, 774 F.2d 506, 508 (CADC 1985); *Baron* v. *Brackis*, 312 F.Supp.2d 808, 813 (E.D. Va. 2004) (distinguishing *Rooker-Feldman* from res judicata in determining whether plaintiffs' previously adjudicated claims were barred). SABIC attempts to distinguish its version of *Rooker-Feldman* by observing that res judicata may preclude issues that could have been raised in the previous action but were not. SABIC Br. 36.[4] But SABIC cannot evade the necessary consequence of its *Rooker-Feldman* approach for any claim in the federal action that was actually litigated in a state-court proceeding. Under SABIC's *Rooker-Feldman* approach, each of the cases just cited (and hundreds, if not thousands, more) should never have addressed preclusion at all because those claims would have been jurisdictionally barred, notwithstanding that Congress's statutory scheme plainly contemplates that federal courts will have jurisdiction to consider affirmative defenses like preclusion in many cases involving claims that were "actually litigated" to final judgment in state courts.

Rooker-Feldman bars "a party *losing* in state court . . . from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the *losing* party's claim that the state judgment itself violates the *loser's* federal rights." *Johnson* v. *De Grandy*, 512 U.S. 997, 1005-06 (1994) (emphasis added). The only other case SABIC has ever cited in which a court applied *Rooker-Feldman* as a jurisdictional bar supplanting a res judicata

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[4] Those courts of appeals that have expressly elided *Rooker-Feldman* with preclusion do not, in fact, maintain that distinction. *See Moccio* v. *N.Y. State Office of Court Admin.*, 95 F.3d 195, 199-200 (CA2 1996).

analysis against a federal plaintiff who *prevailed* in the state-court proceeding is *Friedman's*, in which the Fourth Circuit applied *Rooker-Feldman* merely because "Friedman's [was] asking the federal courts to decide precisely the same issue already decided by a West Virginia state court." 290 F.3d, at 197. Judge Niemeyer's dissent explained why the majority's application of *Rooker-Feldman*, like that of the Third Circuit in this case, was wrong: "This action does not seek to review any state judgment; it seeks to obtain in federal court *the same* relief already obtained in state court." *Id.*, at 200 (Niemeyer, J., dissenting). As in this case, "the appropriate principle to apply would be either *res judicata* or full faith and credit." *Id.* There was "no precedent to support application of" *Rooker-Feldman* in *Friedman's*, *id.*, at 201, or in this case, suggesting that the vast majority of courts recognize the common-sense proposition that parties do not seek "review" of favorable judgments. Even when the federal plaintiff did not prevail in the state action, "[n]ormally the *Rooker-Feldman* doctrine applies when the injury is inflicted by the state court's decision, while if all the state court has done is fail to rectify an injury caused by some other actor then claim preclusion is the appropriate doctrine." *Durgins* v. *City of E. St. Louis*, 272 F.3d 841, 844 (CA7 2001); *accord Noel*, 341 F.3d, at 1163.[5]

[5] Although previously asserting that there was no conflict, SABIC BIO 7-9, SABIC now urges the Court to reject what it now labels the Seventh and Ninth Circuits' "extraordinarily restrictive view." SABIC Br. 44. But the only relevant restriction on *Rooker-Feldman* imposed by those circuits is the one necessitated by the doctrine's actual scope, nature, and statutory origins—that it applies only when the federal plaintiff seeks relief that would turn the federal action into a de facto review of a state-court decision. Moreover, SABIC's attempt to discredit the Seventh Circuit's approach by attributing an untenable bright-line rule to that circuit, *id.*, at 47, ignores the context in the very case SABIC quotes for the supposed "rule." *See Centres, Inc.* v. *Town of Brookfield*, 148 F.3d 699, 702-03 (CA7 1998) (describing the "rule" as "a general guideline" and noting that "[i]ts utility is limited by its exceptions").

SABIC's reliance on *ASARCO Inc.* v. *Kadish*, 490 U.S. 605 (1989), is also misplaced. The Court in *ASARCO*, responding to a specific suggestion that the petitioners could seek an order in federal district court directly overruling an adverse judgment by a state trial court, *id.*, at 623 (citing Brief for United States as Amicus Curiae, *ASARCO, Inc.* v. *Kadish*, 490 U.S. 605 (1989) (No. 87-1661), 20 n.14, available at 1989 WL 1126812, at *20 n.14), commented that such an action "would be an attempt to obtain direct review of the Arizona Supreme Court's decision in the lower federal courts, and would represent a partial inroad on *Rooker-Feldman*'s construction of 28 U.S.C. § 1257." *Id.*, at 622-23. That dicta does not, as SABIC suggests, support expanding *Rooker-Feldman* to encompass any case in which similar issues have been litigated in a state court without regard to whether the federal action seeks to nullify the state judgment.

Nor does *Heck* v. *Humphrey*, 512 U.S. 477 (1994), assist SABIC. In the context of a 42 U.S.C. §1983 action by a state prisoner, *Heck* explained that "the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence." *Id.*, at 487. If, however, "the district court determines that the plaintiff's action, even if successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed." *Id.* In the first circumstance described in *Heck*, as in federal habeas corpus actions (which are a statutory exception to *Rooker-Feldman*, *e.g.*, *Noel*, 341 F.3d, at 1155), the federal plaintiff is seeking "review" of a state-court judgment because the relief sought in the federal action would invalidate the prior adjudication, not simply because identical issues are present.

Finally, confining *Rooker-Feldman* to federal actions in which plaintiffs seek to invalidate a state-court judgment does not, as SABIC asserts, premise a federal court's jurisdiction on subjective intentions or artful pleading. The distinction between a federal action seeking the same relief already granted by a favorable state-court judgment and one seeking to nullify an adverse judgment is an objective one and easily made. Indeed, it is SABIC's repeated and misplaced reliance on ExxonMobil's alleged "admission" that it wanted to maintain its federal suit as an "insurance policy," *e.g.*, SABIC Br. 2, that attempts to inject subjective intentions into the *Rooker-Feldman* jurisdictional inquiry.[6]

ExxonMobil sought to maintain the federal action, as is its right under the congressionally crafted structure of concurrent jurisdiction, as an alternative forum for trying its claims against SABIC in the event that the Delaware trial judgment was nullified on some ground that would not preclude a federal-court trial of those claims. *See, e.g.*, JA 42; *New Orleans Pub. Serv., Inc.* v. *Council of New Orleans*, 491 U.S. 350, 359 (1989) ("The right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied."); *Kline*, 260 U.S., at 234 ("The [federal plaintiff], however, had the undoubted right . . . to invoke the jurisdiction of the federal court and that court . . . could not abdicate its authority or duty in favor of the state jurisdiction."). The only reason parallel actions existed was SABIC's preemptive forum shopping in filing its declaratory-judgment action in Delaware "to obtain an adjudication that (*inter alia*) Delaware's three year statute of limitations barred

[6] The "insurance policy" phrase was coined by the court of appeals, JA 35, not ExxonMobil, and SABIC grossly misrepresents ExxonMobil's position on the relation of the federal litigation to the parallel action in Delaware. ExxonMobil has never said it intended or desired to seek invalidation of any Delaware judgment. Indeed, it expressly disavowed any such intent. JA 42, 54 & n.2.

ExxonMobil's claims." Addendum to SABIC Corr. Supp. Br. 22a. The Delaware Supreme Court rejected SABIC's limitations argument, but if it had ruled in SABIC's favor and reversed the Delaware trial-court judgment on Delaware limitations grounds, that judgment, although adverse to ExxonMobil, would have no bearing on the merits of ExxonMobil's claims in the federal action.

B. The Third Circuit's Misapplication of "Inextricably Intertwined" Eviscerates Concurrent Jurisdiction by Relying on Speculation About Pending State-Court Decisions.

The second "prong" of the court of appeals's *Rooker-Feldman* analysis—its misapplication of *Feldman*'s "inextricably intertwined" standard based on the speculative possibility that the Delaware Supreme Court might render a judgment adverse to ExxonMobil, Pet. App. 8a—ignores the possibility that a pending state decision may be decided on grounds that have no relevance whatever to the merits of the federal action. The court reasoned that reversal on any ground would necessarily transform the federal action into a de facto appellate review of the Delaware Supreme Court's judgment, despite ExxonMobil's disavowal of any intent to seek such review in the federal district court. *Id.* Premising federal jurisdiction on speculation about future events—speculation that, as the Delaware Supreme Court's affirmance illustrates, may prove to be utterly wrong—conflicts with the principle that jurisdiction should ordinarily be ascertainable at the time the federal action is commenced. *See Freeport-McMoran*, 498 U.S., at 428.

It is this aspect of the Third Circuit's approach—not simply, as SABIC misconstrues ExxonMobil's argument to be, the application of *Rooker-Feldman* to any claims that were "actually litigated"—that threatens to eviscerate concurrent federal and state jurisdiction. If the possibility of a future adverse state judgment, on any conceivable grounds, could

really divest a federal district court of jurisdiction over parallel claims, then *Rooker-Feldman* would attach just as firmly at the state-court trial stage as when a favorable judgment is pending on appeal. "[I]f the 'inextricably intertwined' test means that a federal plaintiff cannot raise issues that are 'inextricably intertwined' with issues raised in simultaneous ongoing state court litigation, *Rooker-Feldman* would prevent the parallel state and federal litigation that is one of the hallmarks of our federal system." *Kougasian* v. *TMSL, Inc.*, 359 F.3d 1136, 1143 (CA9 2004).

Friedman's adopted the same flawed rationale applied by the Third Circuit in this case. 290 F.3d, at 195 (applying *Rooker-Feldman* in part because the federal plaintiff "want[ed] a federal order compelling arbitration at the ready in case the West Virginia Supreme Court of Appeals . . . reverses the decision of the lower state court"). That application of *Rooker-Feldman* was "inappropriate" because "even if the West Virginia Supreme Court were to affirm . . . , then the appropriate principle to apply would be either *res judicata* or full faith and credit." *Id.*, at 200 (Niemeyer, J., dissenting).

In cases in which the relevant state-court decision is pending, abstention and prudential-dismissal doctrines carefully balance efficiency and comity with the strong principle in favor of federal courts exercising the jurisdiction entrusted to them by Congress, notwithstanding SABIC's dismissive characterization of those doctrines as "purely" the Court's "judicial creations." SABIC Br. 43; *see Noel*, 341 F.3d, at 1164; *cf. Kowalski*, 125 S.Ct., at 569-70 & n.4 (noting that the "mischief" of conflicting state and federal rulings could have been avoided if the *Younger* v. *Harris*, 401 U.S. 37 (1971), abstention doctrine had been applied); *Quackenbush* v. *Allstate Ins. Co.*, 517 U.S. 706, 731 (1996) ("Under our precedents, federal courts have the power to dismiss or remand cases based on abstention principles only where the relief being sought is equitable or otherwise discretionary."); *Moses H. Cone Mem'l Hosp.* v. *Mercury Constr. Corp.*, 460 U.S. 1, 10 (1983) ("[A] stay of the federal suit pending resolution of the state suit meant that there would be no further litigation in the federal forum; the state court's judgment on the issue would be res judicata.").

"These federalism-based abstention and comity doctrines are complex and subtle, ensuring that a decision by a federal court to proceed, abstain, or stay in the face of parallel state court litigation will be made only after considering a number of case- and doctrine-specific factors." *Noel*, 341 F.3d, at 1160. Paralleling its attempt to distinguish an expansive version of *Rooker-Feldman* from congressionally mandated respect for state preclusion law, SABIC asserts that, in cases jurisdictionally barred under its expansive version of *Rooker-Feldman*, discretionary abstention or dismissal after careful balancing of important factors have no place. SABIC Br. 43. But, again, that assertion demonstrates precisely why adopting SABIC's expansive *Rooker-Feldman* approach would be inconsistent with the federal courts' "virtually unflagging obligation . . . to exercise the jurisdiction given them." *Colo. River*, 424 U.S., at 817. As with its argument in favor of circumventing state preclusion law, SABIC's grievance with the Court's existing abstention and prudential dismissal doctrines is essentially that they do not bar enough federal litigation. That argument does not provide any principled justification for expanding *Rooker-Feldman* to cover what SABIC regards as a deficiency in our Nation's dual jurisdictional structure.

II. This Case Is a Live Controversy Over the District Court's Jurisdiction.

Although the Delaware judgments on the merits likely preclude SABIC from evading their adverse consequences, it is well established that they do not render moot this proceeding to determine the district court's jurisdiction. *See Male* v. *Atchison, Topeka & Santa Fe Ry.*, 240 U.S. 97, 98-99

(1916); *accord Old Colony Trust Co.* v. *City of Seattle*, 271 U.S. 426, 429 (1926); *Ill. Cent. R. R. Co.* v. *Adams*, 180 U.S. 28, 31-32 (1901); *Cramer* v. *Phoenix Mut. Life Ins. Co.*, 91 F.2d 141, 144-45 (CA8 1937); *cf. Friedman's*, 290 F.3d, at 200 (Niemeyer, J., dissenting) ("[T]he majority's application of the doctrine of mootness is even more profoundly flawed than its application of the *Rooker-Feldman* doctrine.").[7]

Male directly answers any question about this Court's jurisdiction. As in this case, the issue before the Court in *Male* was "whether as a Federal court [the district court] had power to entertain the cause," and the respondent argued that an intervening state-court judgment on the merits rendered the appeal to this Court moot. *Male*, 240 U.S., at 98-99. *Male* overruled the respondent's motion to dismiss, explaining that "the ground of the motion obviously involves the defense of 'the thing adjudged,' going to the merits, . . . and we come to consider the question of the jurisdiction of the court below." *Id.*, at 99. Similarly, *Old Colony* rejected an argument that a state-court decree on the underlying claims mooted a jurisdictional appeal to this Court, explaining "[t]hat decree may have a bearing on the merits, but affords no ground for dismissing this appeal." 271 U.S., at 429; *see also Ill. Cent.*, 180 U.S., at 32-33; *Cramer*, 91 F.2d, at 144-45. The question before this Court—whether the federal district court has jurisdiction over ExxonMobil's claims—was never presented to or decided by any Delaware state court. Nor, of course, could it have been. As it did in

[7] As an initial matter, if SABIC's newly minted mootness theory were correct, it would require vacating the court of appeals's judgment because that court would have lacked appellate jurisdiction to determine the district court's jurisdiction. *See, e.g., Church of Scientology* v. *United States*, 506 U.S. 9, 12 (1992). Moreover, combining SABIC's theory that a federal case is necessarily mooted whenever a state trial court renders judgment on parallel claims with its theory that *Rooker-Feldman* necessarily bars a federal action in the precise same circumstance would, at the very least, render one theory superfluous.

Male and *Old Colony*, the Court should resolve the federal jurisdictional question at issue.

Moreover, even if the underlying dispute on the merits had any bearing on the vitality of this jurisdictional appeal, SABIC's own actions belie its assertions that the merits have now been resolved once and for all by the Delaware Supreme Court's affirmance. Within days of filing its supplemental brief asserting that the Delaware affirmance mooted the entire controversy, SABIC moved that court to withdraw its mandate and for reargument. On February 1, 2005, the Delaware Supreme Court in fact recalled the mandate to permit SABIC to pursue its motion for reargument. The possibility—however remote—that the Delaware Supreme Court will vacate its decision gives ExxonMobil an unquestionable concrete stake in resolution of the jurisdictional question that will determine ExxonMobil's right to pursue its claims in a new trial in a federal forum if the Delaware judgment should be rendered a nullity. *See North Carolina* v. *Rice*, 404 U.S. 244, 246 (1971) (noting that a suit is cognizable in a federal court when it is "definite and concrete, touching the legal relations of parties having adverse legal interests").

Having lost the Delaware action it initiated, SABIC seeks to prevent the Court from reviewing the court of appeals's erroneous jurisdictional ruling because it presumably wants to avert the consequences of applying preclusion principles in the consolidated cases in the district court. In those consolidated proceedings, ExxonMobil has asserted that SABIC's claims in NJ-I are barred by affirmative defenses that include the issues already tried in Delaware. A reversal of the decision of the court of appeals is an effective remedy because it will permit the district court to appropriately address all preclusion issues together. In any event, these nonjurisdictional preclusion issues are very much alive and ought to be decided, in the first instance, by the district court.

CONCLUSION

For these reasons and those discussed more fully in ExxonMobil's opening brief, the Court should reverse the court of appeals's judgment and order ExxonMobil's claims to be reinstated.

Respectfully submitted,

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